APPEAL NO. 93405

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). On April 27, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine the issue of claimant's correct impairment rating resulting from a lumbar spine injury sustained by the claimant, who is the appellant in this appeal. The claimant was injured on (date of injury), while employed by (employer). The hearing officer determined that the report of the designated doctor should be adopted and found that claimant's impairment rating was five percent, with claimant having reached maximum medical improvement (MMI) on September 4, 1992.

The claimant has appealed this decision, arguing that the designated doctor's report was based upon an incorrect and rudely performed examination. The carrier argues why the decision should be upheld.

DECISION

We affirm the hearing officer's decision.

Claimant was injured when she lifted a heavy bundle of material. Claimant was examined in July 1992 by (Dr. O), for the carrier; Dr. O determined at that time that claimant had not reached MMI. On September 4, 1992, claimant's treating doctor, (Dr. P), an orthopedic surgeon, determined she had reached MMI. He assessed a 16% impairment rating, derived by adding a seven percent rating for specific disorders of the lumbar spine to nine percent assessed for loss of range of motion. His opinion notes that claimant had a normal MRI examination performed on May 22, 1992. The MRI report document notes "no direct or indirect signs of disc desiccation, protrusion, extrusion, sequestration, or herniation."

Claimant was examined three times by the designated doctor, (Dr. H), also an orthopedic surgeon, who was appointed upon request of the carrier to resolve the dispute over impairment. Each time, Dr. H attempted to measure any loss of range of motion. Claimant stated she was "pushed" through movements even though she was in pain. Dr. H completed a TWCC-69 Report of Medical Evaluation on November 17, 1992, which stated that MMI was reached September 4, 1992, and claimant had a five percent impairment rating. He stated that "three attempts at obtaining valid spinal measurements have been unsuccessful."

Dr. P replied in two letters to Dr. H's assessment. In the first, he argued that Dr. H did not comply with the law requiring measurements of range of motion. In the second, he noted that "the methods used by [Dr. H] and myself were different in that [Dr. H]'s personnel forced the patient to bend in spite of her pain while my equipment stopped at the point of pain. At the present time I am unable to determine which method is most appropriate. It seems that the answer is not readily available."

The use of a designated doctor is intended under the Act to assign an impartial doctor to finally resolve disputes over MMI and impairment rating. To achieve this end, the report of a Commission appointed designated doctor is given presumptive weight. Article 8308-4.26(g). Only the great weight of medical evidence can reverse this presumptive status. A finding of impairment by a doctor chosen by the claimant must be confirmable by a designated doctor. Article 8308-4.25(a). As the Appeals Panel has stated before, this requires more than a mere balancing of the evidence. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Lay testimony or evidence does not provide a sufficient basis to overcome this presumption.

The carrier correctly notes in its appeal that there is no medical evidence to substantiate incorrect use of the AMA Guides to the Evaluation of Permanent Impairment by Dr. H. In fact, the treating doctor in his second letter after Dr. H's evaluation appears to agree that there is no preferable method for determining range of motion, noting that he performed the exam to the point of pain, while Dr. H allegedly performed the exam past the point of pain. The fact that claimant still hurts is recognized, and is not contradicted, by the fact that each doctor did assess impairment. In light of the normal MRI, Dr. H's assessment arguably gives the claimant benefit of the doubt.

The determination of the hearing officer that the great weight of medical evidence is not against the report of the designated doctor is sufficiently supported by the record, and is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge